

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
TUESDAY - - AUGUST 2, 2005 - - 7:30 P.M.

Mayor Johnson convened the Regular Meeting at 8:24 p.m.

ROLL CALL - Present: Councilmembers Daysog, deHaan, Gilmore, Matarrese and Mayor Johnson - 5.

Absent: None.

AGENDA CHANGES

(05-375) Mayor Johnson announced that the Public Hearing to consider an Appeal of the Planning Board approval of Parking Garage Use Permit [05-389] and Public Hearing to consider an Appeal of the Planning Board approval of Cineplex design [05-390] would be continued to August 16, 2005.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY AND ANNOUNCEMENTS

(05-376) Mayor Johnson welcomed the new City Manager.

(05-377) Presentation to the Fourth of July Committee recognizing their efforts for a successful Mayor's Fourth of July Parade.

Mayor Johnson read and presented the Proclamation to the Fourth of July Committee members.

Barbara Price, Committee Chair, thanked the Council for recognizing the Committee and construction crews; stated that \$20,000 was raised; \$10,000 would go to school music programs.

Mayor Johnson thanked Bill Frink, Harris and Associates, for the extraordinary effort made to get Park and Webster Streets ready for the parade; stated that people thought the parade was wonderful.

Councilmember deHaan inquired how many participants were in the parade.

Ms. Price responded that there were 3,000 participants, 182 entries, 17 bands and 13 equestrian units.

Councilmember Matarrese thanked the Committee for their time and efforts.

(05-378) Proclamation declaring Brad Kruck to be Alameda's 2004 Housing Choice Voucher Program Rental Property Owner of the Year in the three or fewer rental unit category.

Mayor Johnson read and presented the Proclamation to Brad Kruck.

(05-379) Proclamation declaring Irene Hanson to be Alameda's 2004 Housing Choice Voucher Program Rental Property Owner of the Year in the four or more rental unit category.

Mayor Johnson read and presented the Proclamation to Irene Hanson.

(05-380) Library Project update.

The Project Manager gave a brief presentation.

Councilmember Matarrese thanked the Project Manager for ensuring that the project was on schedule and for managing the contingency fund; requested that the Project Manager thank the contractors.

The Project Manager stated that a second change order, which is a credit back to the Contract, would be brought to the Council next month.

Councilmember deHaan stated that he hoped that future reports would be as upbeat as the report presented tonight.

#### CONSENT CALENDAR

Mayor Johnson announced that the recommendation to authorize the Mayor to send a letter to the United States Postal Service [05-383] and Adoption of Resolution Empowering the City Attorney to Employ Special Legal Counsel [05-386] were removed from the Consent Calendar for discussion.

Councilmember deHaan moved approval of the remainder of the Consent Calendar.

Vice Mayor Gilmore seconded the motion, which carried by unanimous voice vote - 5.

[Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(\*05-381) Minutes of the Special Joint City Council and Community Improvement Commission (CIC) meeting held on June 21, 2005; and the Special, Special Joint City Council and CIC, and Regular City Council meetings held on July 19, 2005. Approved.

(\*05-382) Ratified bills in the amount of \$4,913,721.97.

(05-383) Recommendation to authorize the Mayor to send a letter to the United States Postal Service regarding the City's interest to relocate the distribution function of the Alameda Post Office from Shoreline Drive to another site in Alameda.

Mayor Johnson stated that the City Manager would revise the draft letter.

Councilmember Matarrese stated that he is in favor of relocating the distribution center; that there is no reason for a warehouse and parking lot to enjoy one of the best views of the entire East Bay; stated that the City should retain some sway over what would be placed at the site; there is no need for another carwash or retail-type enterprise that would not take advantage of the location; efforts should be made to retain a retail front within the South Shore Center for mail transactions.

Councilmember Daysog stated that he has a concern with the possibility that the Post Office would be relocated at Alameda Point.

Mayor Johnson stated that the intent was to have the retail portion of the Post Office remain at the South Shore Center and have the sorting portion of the facility move to a more appropriate location.

Councilmember deHaan stated that the relocation of the distribution center is a great opportunity for the City.

Mayor Johnson stated the relocation is not certain; the matter has been discussed for years.

Vice Mayor Gilmore moved approval of the staff recommendation.

Councilmember deHaan seconded the motion, which carried by the following voice vote: Ayes: Councilmembers deHaan, Gilmore, Matarrese and Mayor Johnson - 4. Abstentions: Councilmember Daysog - 1.

(\*05-384) Recommendation to adopt specifications for Vehicle Tow Contract for abandoned vehicles for the Police Department Accepted.

(\*05-385) Recommendation to amend the Consultant Contract with Signet Testing Labs, Inc., modifying the scope of work and increasing the Contract price in the amount of \$54,000 for the New Main Library Project, No. P.W. 01-03-01. Accepted.

(05-386) Adoption of Resolution Empowering the City Attorney to

Employ Special Legal Counsel. **Not adopted.**

Councilmember Matarrese stated that the proposed resolution was a very good start in addressing how the Council would implement its authority per Section 8-5 of the Charter and to be clear on how the Council chooses to empower the City Attorney to make decisions at a lower expenditure level and moving up; the Charter obligations are met with the concepts in the proposed resolution; the resolution should be written in said terms; the elements, e.g. threshold, are included; the direction is in terms of implementation of a Section of the Charter; reporting details do not have relevance to the Charter, are more of an expectation and work product rather than an implementation of the Charter, and should be removed from the resolution; that he does not recall discussing how the Council would incorporate Alameda Power & Telecom (AP&T), the Community Improvement Commission (CIC) and Alameda Reuse and Redevelopment Authority (ARRA).

Vice Mayor Gilmore stated that she recalled that there would be a separate discussion on AP&T; that she was not sure whether there would be a separate discussion on the ARRA and CIC.

Councilmember Matarrese noted that the discussion would be about delegating authority to the Public Utilities Board (PUB); the resolution should be presented in terms of clarifying and providing the procedure for implementing the Charter; further stated that the proposed resolution should be written as the Council's path on how it empowers the City Attorney to engage outside counsel.

Councilmember Daysog stated that the proposed resolution starts with operative clauses; pre-ambulatory clauses are needed to provide context.

Mayor Johnson stated the language should restate the Charter provision and state that pursuant to the Charter, the Council has the authority and is making a delegation of its Charter authority under the particular circumstances in the resolution.

Vice Mayor Gilmore inquired whether the language should state that the resolution would also apply to the CIC and ARRA.

Mayor Johnson stated that the CIC and ARRA should be separate because the authority regarding outside counsel for the CIC and ARRA are under by-laws, not the Charter.

Councilmember deHaan stated that a separate action would be needed.

Vice Mayor Gilmore clarified that the intent is to have the same

apply to ARRA and the CIC.

Mayor Johnson stated that she concurred with Councilmember Matarrese; some language should not be included in the resolution; the purpose of the resolution is to delegate authority under the Charter; procedural issues should be in a separate document and should be removed [from the resolution]; that she was not clear on the \$35,000 threshold; the resolution states that the City Attorney has the authority to spend \$35,000 on any chase and does not come to the Council until \$35,000 is spent, which was not what Council intended.

Councilmember deHaan stated the intent was that the City Attorney would advise the Council of the approximate cost of the case; if the case would reach the \$35,000 threshold, it would definitely have to come to the Council.

Councilmember Matarrese stated the resolution is not to limit spending, rather it defines when the Council's Charter authority is delegated; small consultations that amount to a couple thousand dollars should not come to the Council and authority is delegated; \$35,000 was an order of magnitude when there would be a significant impact on the City's liability or a significant amount of money would be spent and the Council's authority would not be delegated.

Mayor Johnson stated that she recalled that if the anticipated legal costs would be more than \$35,000, than the matter would come to Council, however the City Attorney could spend money on the interim until the matter comes to the Council.

Vice Mayor Gilmore stated that she recalled that the \$35,000 threshold had a couple of caveats; the matter would come to Council if there were policy questions or if there were potentially large ramifications no matter how much or small of an amount would be spent; if there were a matter that Councilmembers wanted to ask questions about, Councilmembers have the option to have the matter brought to Council.

Councilmember Matarrese stated said directions are work product and performance issues, not a question of delegating authority; the Council is trying to identify a point when the Council delegates authority to the City Attorney and when Council retains authority; something of extreme importance might cost less than \$35,000 and the City Council might want to retain its authority on the engagement of outside counsel; the question is of delegation, not limits on spending; the intent is to define the delegation.

Mayor Johnson stated that she interpreted that the intent of the

proposed resolution was that the City Attorney could spend \$35,000 and then, once the cost goes beyond \$35,000, the matter would come to the Council for additional authority.

The City Attorney stated that the fourth bullet point in the resolution includes limitations on spending; that she does not have the authority to spend \$35,000 on a \$200,000 case and then come to Council.

Mayor Johnson stated that the fourth bullet point addresses reporting; the first bullet point states that the City Attorney is authorized by the Council to spend up to \$35,000 per matter from the appropriated budget without prior Council approval; the statements implies that the Councils is giving the City Attorney authority to spend \$35,000 on any matter before coming to Council; the fourth bullet point is a reporting requirement; the focus should be on the issue of when the Council is delegating its Charter authority to the City Attorney, not reporting requirements; the language might just need clarification; inquired whether she was interpreting the first bullet point correctly.

The City Attorney responded that the first bullet point is in context of the fourth bullet point, which means that she has authorization to spend \$35,000 per matter without prior Council approval, however, she must come to Council with the litigation budget for anything estimated to exceed \$35,000 within 35 days.

Mayor Johnson inquired whether the City Attorney would come to Council for approval of hiring outside counsel or simply to report to the Council.

The City Attorney responded that she would bring the issue to the Council similar to the Closed Session tonight.

Mayor Johnson stated the Closed Session tonight was a report; the purpose of the resolution is to clarify when the Council would delegate its authority to the City Attorney to hire outside counsel.

Councilmember Matarrese stated that the Council would not delegate its authority to hire outside counsel if any of the following apply: 1) if the estimated defense costs were over \$35,000; 2) if a policy question were involved; 3) if there were significant ramifications to the City; and 4) if requested by the Council; the Council does not delegate its authority to hire outside counsel if any of the four apply; the \$35,000 threshold allows the City Attorney to engage outside counsel to get the ball rolling so that the City would not incur increased liability if there was an

immediate need and the Council did not meet for two weeks; the reporting [approval of hiring outside counsel] would occur at the next regular City Council meeting; a special meeting could be called if the matter was extremely urgent.

Mayor Johnson stated the language in the resolution should be clarified to reflect Councilmember Matarrese's comments.

The City Attorney stated that she would have to retain outside counsel in order to start litigation.

Mayor Johnson stated the Council understands said issue, which is the reason for the \$35,000.

Councilmember Matarrese concurred; stated the \$35,000 threshold allows the City Attorney to do so [retain outside counsel]; inquired whether \$35,000 was a reasonable amount to get the ball rolling on a big case.

The City Attorney responded in the affirmative.

Councilmember Daysog stated that he is interpreting the exercise of the City Attorney's responsibilities within the \$35,000 threshold in two ways: 1) the Council is trusting the City Attorney to exercise professional responsibility in evaluating the cost ahead of time; if said evaluation deems that the matter would be less than \$35,000, the City Attorney has the authority to move forward; 2) the Council is trusting the City Attorney to use her professional background and experience to make the decision to bring the matter to the Council when the cost would be more than \$35,000.

Mayor Johnson stated that there is an accountability issue; Council would have questions if a case were estimated to cost \$5,000 and it ended up costing \$80,000; there is a check and a balance; the reporting requirements, limitations on hiring outside counsel, and the Public Utilities Board delegation should be addressed separate; the resolution should not read: "limitations on spending outside counsel budget;" limiting spending is not the intention; the City will have to spend whatever amount needs to be spent; the delegation or approval of the hiring of outside counsel under certain circumstance is what is being addressed; requested that the matter be brought back to Council; stated the CIC, ARRA and AP&T issues also need to be discussed later.

Councilmember Matarrese stated once the questions that were raised are resolved with the next draft, the Council could move forward to extrapolate the same approach to ensure the language is correct in

the ARRA and CIC by-laws; then, Council could discuss whether it wants to delegate its authority to the PUB.

Councilmember deHaan questioned whether items other than an estimate over \$35,000, policy questions, significant ramifications or Council questions should trigger that the matter comes to Council; inquired if there were significant ramifications the matter would come to Council regardless of whether the cost would be \$35,000.

Vie Mayor Gilmore responded in the affirmative; stated that she does not care how much a matter costs, the matter should come to Council if there would be significant ramifications.

Councilmember Matarrese stated the four points [over \$35,000, policy questions, significant ramifications or Council questions] are the conditions under which the Council's authority is retained.

Mayor Johnson concurred; stated the language should be clear that [under the four conditions,] the Council retains its authority to empower the City Attorney to hire outside counsel.

The City Attorney requested that the revised proposal be brought back to the Council in September since she will not be at the August 16, 2005 City Council Meeting.

#### REGULAR AGENDA ITEMS

(05-387) Ordinance No. 2943, "Amending the Alameda Municipal Code by Amending Various Sections of Chapter XXX (Development Regulations)." Finally passed.

Ken Carvalho, Alameda, urged the Council to pass the Ordinance.

Councilmember deHaan moved final passage of the Ordinance.

Councilmember Matarrese seconded the motion, which carried by the following voice vote: Ayes: Councilmembers deHaan, Gilmore, Matarrese, and Mayor Johnson - 4. Abstentions: Councilmember Daysog - 1.

(05-388) Ordinance No. 2944, "Amending the Alameda Municipal Code by Declaring Boutique Theaters to be Uses Permitted by Use Permit within the C-1 Neighborhood Commercial Zoning District of Chapter XXX (Development Regulations)." Finally passed.

Councilmember Matarrese moved final passage of the Ordinance.



Councilmember deHaan noted that reducing the number of districts still needed to be reviewed.

Councilmember Daysog seconded the motion, which carried by the following voice vote: Ayes: Councilmembers Daysog, deHaan, Matarrese, and Mayor Johnson - 4. Abstentions: Vice Mayor Gilmore - 1.

(05-389) Public Hearing to consider an Appeal of the Planning Board approval of Parking Garage Use Permit (UP05-0008) and Design (DR05-0028); and adoption of related resolution. **Continued to August 16, 2005.**

(05-390) Public Hearing to consider an Appeal of the Planning Board approval of Cineplex Design (DR05-0041); and adoption of related resolution. **Continued to August 16, 2005.**

#### ORAL COMMUNICATIONS, NON-AGENDA

(05-391) Richard Scrindy, Alameda, stated that he is selling his house in Alameda; inquired why past permits have not been honored and why criminal charges were filed against him; invited the Council to come to his home; thanked Mayor Johnson, Councilmember Matarrese and Councilmember deHaan for trying to help.

#### COUNCIL COMMUNICATIONS

(05-392) Written communication from the League of California Cities requesting designation of Voting Delegate for the League's 2005 Annual Conference.

Mayor Johnson suggested that Councilmember Daysog be the City's delegate and Vice Mayor Gilmore be the alternate.

Councilmember Matarrese moved approval of Councilmember Daysog serving as the City's delegate and Vice Mayor Gilmore serving as the alternate.

Councilmember deHaan seconded the motion, which carried by unanimous voice vote - 5.

(05-393) Discussion regarding the placement of proposed federal legislation that would amend the Indian Gaming Regulatory Act to limit casino expansion on the August 16, 2005 City Council agenda for formal action.

Mayor Johnson stated proposed federal legislation regarding gaming might be helpful to communities such as Alameda; the matter would

be continued because there was not sufficient information provided yet.

Councilmember Daysog inquired whether other legislation was being proposed.

Mayor Johnson responded that she thought there was proposed legislation from Senators Feinstein and McCain; stated that all information would be presented when the matter returns to Council.

(05-394) Councilmember Matarrese welcomed the new City Manager; stated that he was looking forward to working with the new City Manager to get a lot done.

Councilmember Daysog welcomed the new City Manager.

Councilmember deHaan welcomed the new City Manager; noted that tonight's adjournment time is not the norm.

#### ADJOURNMENT

There being no further business, Mayor Johnson adjourned the Regular City Council Meeting at 9:17 p.m.

Respectfully Submitted,

Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL CITY COUNCIL MEETING  
TUESDAY- - -AUGUST 2, 2005- - -5:30 P.M.

(05-373) A Special Meeting was called to allow the Council to attend an electric bus demonstration.

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Lara Weisiger  
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.

MINUTES OF THE SPECIAL JOINT CITY COUNCIL,  
COMMUNITY IMPROVEMENT COMMISSION,  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY, AND  
HOUSING AUTHORITY BOARD OF COMMISSIONERS MEETING  
TUESDAY - - - AUGUST 2, 2005 - - - 7:05 P.M.

Mayor/Chair Johnson convened the Special Joint Meeting at 7:07 p.m.

Roll Call - Present: Councilmembers/Commissioners/Authority/Board  
Members Daysog, deHaan, Gilmore, Matarrese  
and Mayor/Chair Johnson - 5.

Absent: None.

(05-374CC/05-036CIC) Conference with Legal Counsel - Existing  
Litigation; Name of case: Operation Dignity, Inc. v. City of  
Alameda, Community Improvement Commission, Alameda Reuse and  
Development Authority and Housing Authority.

Following the Closed Session, the Special Meeting was reconvened  
and Mayor/Chair Johnson announced that the Council/Commissioners/  
Authority/Board Members obtained briefing and gave direction to the  
City Attorney/Legal Counsel.

Adjournment

There being no further business, Mayor/Chair Johnson adjourned the  
Special Joint Meeting at 7:50 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk  
Secretary, Community Improvement  
Commission

The agenda for this meeting was posted in accordance with the Brown  
Act.

MINUTES OF THE SPECIAL COMMUNITY IMPROVEMENT COMMISSION MEETING  
TUESDAY- -AUGUST 2, 2005- -7:27 P.M.

Chair Johnson convened the Special Meeting at 8:03 p.m.

ROLL CALL - Present: Commissioners Daysog, deHaan, Gilmore,  
Matarrese and Chair Johnson - 5.

Absent: None.

MINUTES

(05-037) Minutes of the Special Joint City Council and Community Improvement Commission (CIC) meeting of June 21, 2005; the Special Joint CIC and Alameda Reuse and Redevelopment Authority meeting of June 28, 2005; and the Special Joint City Council and CIC Meeting of July 19, 2005. Approved.

Vice Chair Gilmore moved approval of the minutes.

Commissioner deHaan seconded the motion, which carried by unanimous voice vote - 5. [Note: Commissioner Matarrese abstained from voting on the June 28, 2005 minutes.]

AGENDA ITEM

(05-038) Recommendation to approve the amended Contract with Architectural Resources Group, Inc. by increasing the Contract amount an additional \$307,414 to provide additional pre-planning and construction administration services for the rehabilitation of the Alameda Theater.

The Development Services Director gave a brief report.

Commissioner deHaan stated that the original November 2003 Contract was for \$79,000 and has increased to close to \$1 million; inquired whether the Commission was made aware that additional phases would be added.

The Development Services Director responded that the November 2003 Contract was for the beginning phase; the Commission should have been advised that other phases would be added.

Commissioner deHaan inquired whether there would be a bid package within the next month or two, to which the Development Services Director responded in the affirmative.

Commissioner deHaan inquired whether there would be construction administration throughout the project.

The Development Services Director responded in the affirmative; stated that a construction management contract would be presented at the August 16 CIC Meeting.

Commissioner deHaan inquired whether the construction manager would be a contractor.

The Development Services Director responded in the affirmative; stated the construction manager would also manage the parking garage project.

Commissioner deHaan inquired what the (construction management) Contract would cost, to which the Development Services Director responded approximately \$1 million.

Commissioner deHaan inquired whether there would be additional oversight, to which the Development Services Director responded not unless a problem arose with the historic property.

Commissioner deHaan inquired whether there was a budget for oversight of architecture and engineering for the parking structure, to which the Development Services Director responded in the affirmative.

Morgan, Citizens for a Megaplex Free Alameda, urged that the Commission continue the matter until after a decision has been rendered on the project.

Commissioner Daysog inquired what services Architectural Resources Group, Inc. (ARG) was providing and why another layer of consultants was providing advice.

The Development Services Director responded that construction projects involving the rehabilitation of a historic structure involve changes and modifications; architects are needed to draft up solutions to gray areas.

Commissioner Daysog inquired whether said level of services was always contemplated, to which the Development Services Director responded in the affirmative.

Commissioner Daysog stated that he has a sense of sticker shock with the increased amount of the Contract; that he understands that there is a level of complexity in dealing with a historic structure.

The Development Services Director stated that the construction

administration cost is well within industry standards.

Commissioner Daysog stated that the project should move forward; expert advice is needed because of the project's historic nature.

Commissioner Matarrese inquired whether ARG would provide services for the theatre and not the parking structure, to which the Development Services Director responded in the affirmative.

Commissioner Matarrese stated that expert restoration and preservation advice is needed when restoring and rehabilitating an old building.

Commissioner deHaan inquired whether the Contract would have any impact on the Cineplex, to which the Development Services Director responded in the negative.

Commissioner deHaan inquired whether there were extraordinary circumstances involving the Heating, Ventilation and Air Conditioning (HVAC) system.

The Development Services Director responded in the affirmative; stated the original HVAC system exceeded noise levels.

Commissioner deHaan inquired whether construction administration would be initiated when bids are in hand to which the Development Services Director responded in the affirmative.

Commissioner Matarrese moved approval of the staff recommendation.

Commissioner deHaan seconded the motion, which carried unanimous voice vote - 5.

#### ADJOURNMENT

There being no further business, Chair Johnson adjourned the meeting at 8:23 p.m.

Respectfully Submitted,

Lara Weisiger  
Secretary,  
Community Improvement Commission

The agenda for this meeting was posted in accordance with the Brown Act.